

RemarksApplication Status and Disposition of Claims

This amendment responds to the final Office Action mailed May 14, 2010. Inasmuch as the Office Action sets a three-month shortened statutory period for response to expire on August 14, 2010, Applicants respectfully submit that this response is timely filed and no fee is required for its consideration.

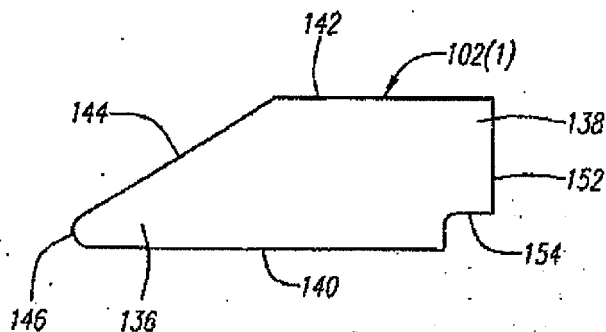
The Action considered all pending claims: 1-8, 14, and 19-21.

By the foregoing amendments, claim 1 is amended. This amendment finds support throughout the specification.

Claim Rejections – 35 U.S.C. § 103

The Action rejects claims 1-8, 14, and 19-21 under 35 U.S.C. § 103(a) as allegedly unpatentable over Carrison et al. (U.S. Published Application No. 2005/0038517) in view of Shimp (U.S. Published Application No. 2004/0052829) in further view of Kim et al. (U.S. Patent No. 5,645,596) and in further view of Tofighi et al. (U.S. Published Application No. 2003/0120351). Applicants respectfully submit that the combination of references fails to create a *prima facie* case of obviousness for the reasons that follow.

With respect to Carrison et al., the Action states that “case side 144 is inclined at a predetermined angle of 32 or 33° with respect to side 140” (referring to Figure 3 of Carrison et al., shown below).



Applicants respectfully note that the present claims require that the one of the opposite, non-parallel surfaces is non-adjoined with the other of the opposite, non-parallel surfaces in the pellet. Applicants respectfully submit that at least this feature of the claims excludes the embodiment of Carrison et al., cited by the Office Action.

Applicants further note that because the one of the opposite, non-parallel surfaces is inclined at a predetermined angle in the range of 20 to 40° with respect to the other of the opposite, non-parallel surfaces, adjacent bone replacement materials are in surface-to-surface contact with each other so that they are held or fixed stably in the hollow passage of the cylindrical member (see page 15, lines 20-22 of the present specification). Further, when a plurality of pellets of the bone replacement material are successively introduced into the cavity in the bone defective part, the introduced pellets of the bone replacement material are effectively dispersed into various directions, thereby enabling a further increase of the bone filling ratio by the bone replacement material (see page 19, lines 9-13).

Applicants submit that these features of the present invention are not taught or suggested by Carrison et al. (or the other cited references). The wedges 102 of Carrison et al. (shown above) cannot exhibit these effects. Carrison et al.'s wedges, in which one of the opposite, non-parallel surfaces 152 is inclined at an angle in the range of 57-58° with respect to the other of the opposite, non-parallel surfaces 144, cannot be pushed out in various directions by the wedge driver from the cannula 104. In addition, in the wedges 102 in which the angle is larger than the upper limit value, namely 40°, of the range claimed in present claim 1, sharp protrusions are formed on the bone replacement material so that chipping is likely to occur when a load is applied thereto (see page 19, line 24, to page 20, line 2).

Applicants submit that the secondary references cited in the rejection fail to satisfy these deficiencies of Carrison et al. Accordingly, Applicants respectfully submit that for at least these reasons, a *prima facie* case of obviousness is not made out by Carrison et al. in view of Shimp in further view of Kim et al. and in further view of Tofghi et al.

Obviousness-Type Double Patenting

The Action rejects claims 1-8, 14, and 19-21 for obviousness-type double patenting over claims 1-15 of U.S. Patent No. 7,238,209 in view of Kim et al. (U.S. Patent No. 5,645,596) and in further view of Tofighi et al. (U.S. Published Application No. 2003/0120351).

In response, Applicants submit herewith an executed Terminal Disclaimer. Applicants respectfully request withdrawal of the rejection.

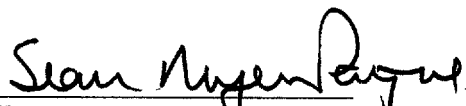
Conclusion

In view of the foregoing, the Examiner is respectfully requested to reconsider and withdraw the rejections of record, and allow each of the pending claims.

Applicants therefore respectfully request that an early indication of allowance of the application be indicated by the mailing of the Notices of Allowance and Allowability.

Should the Examiner have any questions regarding this application, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully Submitted,
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Attachments: Executed Terminal Disclaimer

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